

## **REMARKS**

### **I. Status of the Claims**

At the time of the Action, Claims 1-42 were pending. The Action objected to the drawings, the specification and certain of the claims. All pending claims stand rejected under either Section 102(b) or Section 103(a). These objections and rejections are addressed below.

### **II. The Drawing Objections**

The Action objects to the drawings for the failure of the drawings to show (a) the support pads being forwardly of the seat (Claims 1, 13, 24, 33 and 39) and (b) the backrest defining a plane that forms an angle of between about 75 and 95 degrees with the underlying surface (Claims 5, 19, 28 and 34). Claims 1, 13, 24, 33 and 39 have been amended above to remove the recitation cited in the Action, thereby making this objection moot. Claims 5, 19, 24 and 34 have been amended to recite that the backrest defines a plane that forms an angle of between about 60 and 80 degrees with the underlying surface (*see, e.g.*, page 6, line 8 for support thereof). These amendments should overcome this objection, and Applicants respectfully request that it be withdrawn.

The Action also objects to Figure 1, in which the reference number "61" is labeled "19". Applicants have submitted a replacement drawing herewith.

The Action further objects to the drawings because "they do not include the following reference sign(s) mentioned in the description: '41b'." Applicants respectfully direct the Examiner's attention to Figure 3, wherein the reference number "41b" appears toward the top left portion of the page. As such, Applicants respectfully request that this objection be withdrawn.

### **III. Objections to the Specification**

The Action objects to the specification for the inclusion of minor typographical errors. Applicants have amended the specification above to address these concerns, and request that the objection to the specification be withdrawn.

**IV. Objections to the Claims**

The Action objects to Claims 5, 19, 23, 24, 28, 32 and 34 for the inclusion of certain terminology. Applicants have amended all of these claims as suggested by the Examiner, and respectfully request that this rejection be withdrawn.

**V. The Art Rejections**

**A. The Section 102(b) Rejections**

The Action rejects Claims 1-11, 13-22, 24-31, 33-37 and 39-42 under Section 102(b) as being anticipated by a "Time Machines" brochure by Nautilus (pages A-22, A-23 and A-28). The Action lists the claim elements it deems to be present in Time Machines, but concedes that Time Machines may not disclose a machine that has, *inter alia*: (a) axes of rotation that form an angle of between about 115 and 155 degrees (Claims 1 and 24) or 135 to 145 degrees (Claims 7, 15 and 30); or (b) vertical planes defined by the frame upright of between about 20 and 70 degrees (Claims 8, 13, 31 and 39) or 35 to 45 degrees (Claims 9, 14 and 40). Nevertheless, the Action states that these angles are a matter of design choice that one in exercise art would select "to satisfy desired exercise parameters for effectiveness and comfort." The Action at page 7.

Applicants agree with the implication in the Action that Time Machines fails to disclose these angular relationships. However, Applicants disagree that these angular relationships are mere design choices (*see* Section V.B below). More fundamentally, however, Applicants note that Time Machines discloses a machine for exercising the **biceps**, not the **triceps**, of an exerciser. For example, Claim 1 recites that the machine has a resistance system that "provides resistance to rotation of the movement arms as that move from the retracted position to the extended position." The "retracted position" is defined such that the user's arms are bent, and the "extended position" is defined such that the user's arms are extended. Thus, resistance is experienced by the user as he straightens his arms. In contrast, the machine shown in Time Machines is a biceps curl machine, which is designed such that the user experiences resistance as the biceps muscles contract (*i.e.*, when the arm moves from an extended position to a bent position); the user's movement from the retracted to extended position is actually assisted, not resisted, in the Time Machines device. As a

biceps machine, Time Machines cannot disclose the above-noted recitations of Claim 1, and cannot, therefore, anticipate Claim 1.

Each of independent Claims 13, 24 and 33 also includes recitations that (a) define the retracted and extended positions as set forth above and (b) state that resistance is experienced by the users in moving from the retracted position to the extended position. Accordingly, Time Machines cannot anticipate any of these claims either.

Applicants also disagree with the implication offered in the Action that the angular relationships between structures of the present invention are present in Times Machines. Applicants submit concurrently herewith a *Declaration of Gregory M. Webb* (the Webb Declaration), one of the named inventors for this application. The Webb Declaration demonstrates that, not only is the Time Machines exercise machine a biceps curl machine rather than a triceps extension machine, the angular relationships of structures of the Time Machines device do not meet the recitations of the claims. For example, the axes of rotation of the movement arms of the Time Machines exercise machine form an angle of approximately 90 degrees (paragraph 4 of the Webb Declaration). In contrast, Claims 1 and 24 recite that the angle between the pivot axes of the movement arm units be between about 115 and 155 degrees. Similarly, the Time Machines apparatus has upright frame sections that form an angle of about 90 degrees, whereas the devices recited in Claims 13 and 39 have upright frame sections that form planes having an angle of between about 20 and 70 degrees. *Id.* Thus, Time Machines cannot anticipate any of these claims for this additional reason.

Applicants respectfully submit that, inasmuch as Time Machines lacks at least one claim element of each of the independent claims, and in some instances at least two claim elements, Time Machines cannot anticipate any of the claims of the present invention. As such, Applicants request that all rejections under Section 102(b) be withdrawn.

## **B. The Section 103(a) Rejections**

In an alternative fashion, the Action rejects Claims 1-11, 13-22, 24-31, 33-37 and 39-42 as obvious under Section 103(a) based on Time Machines. The Action states that, to the extent that the angular relationships for structures of the machine are recited in the claims, modification of the Time Machines apparatus would have been an obvious design choice.

In response, Applicants first note that, as stated above, Time Machines is directed to a triceps exercise machine, not a biceps machine. As is well-known in this art, exercising of these muscles requires different movements, so the use of a particular structure of a biceps machine may not have the same effect in a triceps machine. Accordingly, Applicants submit that the application of a biceps machine to attempt to show obviousness of a triceps machine is improper.

Moreover, as stated in the Webb Declaration and in the specification, the most common configuration for a triceps machine is one in which the pivot axes of the movement arms are collinear (the Webb Declaration at paragraph 6; *see also* specification at page 2, lines 1-3). However, such a machine is typically somewhat difficult for the user to enter; many have a single bar across the front to support the upper arms, which forces the user to enter from the side, and those that have single arm supports have little room for the user to slip through in order to sit down (the Webb Declaration at paragraph 6). On the other hand, if a machine like that shown in Time Machines with a 90 degree angle between the axes of rotation of the movement arms were configured as a triceps machine, it may be easily entered, but it would still have the problem of being too large for the average sized exerciser (the Webb Declaration at paragraph 5). In contrast, a triceps machine such as that recited in Claims 1, 13 and 24 can be much easier to enter, yet can still be easily used by an average sized exerciser. There is nothing in any of the cited references to suggest this configuration in a triceps machine or the performance advantages that it can convey.

Further, Claim 33 recites a triceps machine that has support pads that are elevated such that the seated user's upper arms are angled upwardly from the shoulder at an angle of at least 5 degrees during exercise. This posture tends to stretch the latissimus dorsi and triceps muscles of the user, which increases the range of motion and stabilizes the positions of the elbows during exercise (*see* the specification at page 8, lines 22-25). A triceps machine of this configuration is not suggested in any of the cited references.

Finally, Claim 39 recites a frame for an exercise machine that has frame uprights that define generally vertical planes that form an angle of between about 20 and 70 degrees. Applicants found that this configuration may be suitable for both triceps and biceps machines despite the differences in exercise stroke. Consequently, a single frame may be manufactured for both machines, which can reduce manufacturing cost. Nothing in any of the cited

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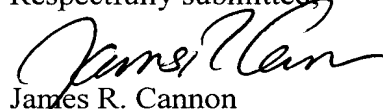
references suggests anything regarding the use of a single frame for triceps and biceps machines, much less the use of a frame having the recited angular relationships.

In view of the foregoing, Applicants respectfully submit that the subject matter of Claims 1, 13, 24, 33 and 39 is not rendered obvious by Time Machines alone or in combination with any of the cited art. As such, Applicants respectfully request that the rejections of these claims and claims dependent therefrom be withdrawn.

**VI. Conclusion**

Inasmuch as all of the outstanding issues raised in the Action have been addressed, Applicants respectfully submit that the application is in condition for allowance, and request that it be passed to allowance and issue.

Respectfully submitted,



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